

**TITLE 170 INDIANA UTILITY REGULATORY
COMMISSION**

**Final Rule
LSA Document #03-193**

DIGEST

Amends 170 IAC 7-1.1-19 to provide for the use of an electronic letter of agency in authorizing a change in telephone carriers. Statutory authority: IC 8-1-1-3. Effective 30 days after filing with the secretary of state.

170 IAC 7-1.1-19

SECTION 1. 170 IAC 7-1.1-19 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.1-19 Unauthorized switching of telecommunications providers; billing for telecommunications or other services added without customer's consent

Authority: IC 8-1-1-3; IC 8-1-29

Affected: IC 8-1-2-4

Sec. 19. (a) For purposes of this rule, the following definitions apply:

(1) "Electronic letter of agency" or "ELOA" means an electronically signed written statement that:

(A) authorizes a change to the customer's primary interexchange carrier or primary local exchange carrier; and

(B) includes the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001(c).

(1) (2) "Express authorization" means an express, affirmative act by the customer clearly agreeing to the change in PIC or LEC in the form of:

(A) a written authorization;

(B) a customer-initiated call to the prospective EXC or LEC;

(C) an oral authorization verified and recorded by an independent third party;

(D) a recorded electronic authorization; or

(E) some other form of recorded authorization, such as personal identification numbers (PINs) or passwords; or

(F) an electronic authorization.

(2) (3) "Letter of agency" or "LOA" means a written statement that the customer signs that authorizes a change to that customer's primary interexchange carrier or primary local exchange carrier.

(3) (4) "Local exchange carrier" or "LEC" means a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.

(4) (5) "Long distance telecommunications service" means service that carries calls to exchanges that are not within the local calling area of the originating number.

(5) (6) "Primary interexchange carrier" or "PIC" means a provider of presubscribed inter-LATA or intra-LATA long distance telecommunications services. **The term includes the following:**

(A) Presubscribed facilities-based carriers of long distance service.

(B) Resellers of long distance service. and

(C) Local exchange carriers providing long distance service.

are included in this definition. In those local exchanges where intra-LATA equal access is available, customers may receive presubscribed long distance service from more than one (1) PIC (one (1) for inter-LATA and one (1) for intra-LATA toll) or may select a single PIC that provides both inter-LATA and intra-LATA toll service.

(6) (7) "Primary local exchange carrier" or "PLEC" means a carrier to which a customer has presubscribed for local exchange service.

(7) (8) "Properly disputed" means the filing of a complaint, either verbally or in writing, with the commission.

(8) (9) "Telemarketing" means the use of telecommunications in marketing campaigns to reach prospective purchasers and sell them goods or services.

prospective PIC shall submit to a LEC a PIC change order generated by telemarketing unless the prospective PIC has obtained express authorization from the customer. No prospective LEC shall submit a PLEC change order generated by telemarketing unless the prospective LEC has first obtained express authorization from the customer.

(c) The prospective PIC or prospective LEC shall confirm such express authorization through one (1) of the following three (3) procedures:

(1) The prospective PIC or prospective LEC shall obtain the customer's written **or electronic** authorization in a form that meets the requirements of subsections (e) through ~~(m)~~: **(n)**.

(2) The prospective PIC or prospective LEC shall obtain the customer's electronic authorization, placed from the telephone ~~number(s)~~ **number or numbers** on which the PIC or PLEC is to be changed, to submit a PIC or PLEC change order. The authorization shall include the information described in subsection (i). Prospective PICs or prospective LECs electing to confirm sales electronically shall establish one (1) or more toll-free telephone numbers exclusively for that purpose. A call to the ~~number(s)~~ **number or numbers** will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC or PLEC change, including automatically recording the automatic number identification (ANI).

(3) An appropriately qualified and independent third party shall obtain the customer's oral authorization to submit the PIC or PLEC change order. Such authorization shall confirm and include appropriate verification data, for example, the customer's date of birth, mother's maiden name, or Social Security number or part thereof. Such authorization is valid only if the entity that obtained the authorization:

(A) is independent of the prospective PIC or prospective LEC or the telemarketing representative of the prospective PIC or prospective LEC;

(B) complies with this section regarding changes to telecommunications carriers;

(C) has a written policy regarding customer complaints and abides by that policy;

(D) has a written policy requiring the maintenance and storage of recorded electronic authorizations for a minimum period of one (1) year and abides by that policy;

(E) has a written script that it uses when obtaining verifications, and the script provides clear and unambiguous notice to the customer: ~~of the following~~:

(i) that the customer is authorizing a change in primary interexchange or primary local exchange carrier;

(ii) ~~of the identity of the new primary interexchange or primary local exchange carrier~~;

(iii) ~~of a toll-free or local number of the LEC that the customer can call to verify whether the change has occurred~~;

(iv) that, for any one (1) telephone number:

(AA) only one (1) prospective PIC may be designated as the subscriber's inter-LATA primary interexchange carrier;

(BB) only one (1) prospective PIC may be designated as the subscriber's intra-LATA primary interexchange carrier; and

(CC) only one (1) intrastate primary LEC may be designated as the subscriber's primary LEC; and

(v) that the PIC change will automatically apply to both inter-LATA and intra-LATA long distance service offerings unless the customer directs otherwise; and

(F) is in a location that is physically separate from that of the prospective PIC or prospective LEC or the telemarketing representative of the prospective PIC or prospective LEC.

(d) A PIC or PLEC change made in violation of any of the requirements of this section is invalid. A prospective PIC or PLEC must provide all information regarding disputed carrier changes and services billings to the commission within thirty (30) days of a commission request for said information.

(e) If the prospective PIC or prospective LEC utilizes the authorization procedure in subsection (c)(1), ~~above~~, the prospective PIC or LEC shall obtain any necessary written authorization from a subscriber for a PIC or PLEC change by using a letter of agency **or electronic letter of agency** as specified in subsections (f) through ~~(m)~~: **(n)**. Any letter of agency **or electronic letter of agency** that does not conform to those subsections is invalid.

(f) The letter of agency **or electronic letter of agency** shall be a separate document ~~(or an easily separable document)~~ **or located on a separate screen or Web page** containing only the authorizing language described in subsection (i), whose sole purpose is to authorize a prospective PIC or LEC to initiate a primary interexchange carrier or PLEC change. The letter of agency must be signed and dated by the subscriber to the telephone ~~line(s)~~ **line or lines** requesting the primary interexchange carrier or PLEC change. The subscriber (or authorized agent in the case of a business customer) whose name appears on bills for local and interexchange service shall be the only party authorized to execute a letter of agency.

(g) The letter of agency shall not be combined with inducements of any kind on the same document, **screen, or Web page**.

(h) Notwithstanding subsections (f) and (g), the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in subsection (i) and the necessary information to make the check a negotiable instrument.

The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier or PLEC change by signing the check. The letter of agency language also shall also be placed near the signature line on the back of the check.

(i) At a minimum, the letter of agency must be printed with a typeface of sufficient size and clarity to be clearly legible and must contain clear and unambiguous language that confirms:

- (1) the subscriber's billing name and address and each telephone number to be covered by the primary interexchange carrier or PLEC change order;
- (2) the subscriber's decision to change the primary interexchange carrier or PLEC from the current interexchange carrier or LEC to the prospective interexchange carrier or prospective LEC;
- (3) that the subscriber designates the prospective interexchange carrier or prospective LEC to act as the subscriber's agent for the primary interexchange carrier or PLEC change;
- (4) that the subscriber understands that, for any one (1) telephone number:
 - (A) only one (1) prospective PIC may be designated as the subscriber's inter-LATA primary interexchange carrier;
 - (B) only one (1) prospective PIC may be designated as the subscriber's intra-LATA primary interexchange carrier; and
 - (C) only one (1) intrastate primary LEC may be designated as the subscriber's intrastate primary LEC;
- (5) that the subscriber understands that any change in primary interexchange carrier or primary LEC may result in a charge to the subscriber; and
- (6) the LEC's toll-free or local number that the customer can call to verify whether the change has occurred.

(j) To the extent a customer selects separate carriers for inter-LATA, intra-LATA, and LEC services, the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier for inter-LATA service must be the carrier directly setting the inter-LATA service rates for the subscriber. Any carrier designated as a primary interexchange carrier for intra-LATA services must be the carrier directly setting the intra-LATA service rates for the subscriber. Any carrier designated as a primary local exchange carrier must be the LEC directly setting the local exchange service rates for the subscriber. One (1) interexchange carrier can be both a subscriber's inter-LATA primary interexchange carrier and a subscriber's intra-LATA primary interexchange carrier.

(k) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier or LEC.

(l) If any portion of a letter of agency is translated into a language other than English, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency.

(m) The letter of agency shall provide the toll-free telephone number and mailing address of the consumer affairs division of the Indiana utility regulatory commission and shall inform the customer of his or her right to file a complaint with that division.

(n) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001(c).

~~(h)~~ (o) Upon request of the customer, offers to provide telecommunications interexchange or local exchange services shall be sent to the customer in written form describing the terms and conditions of service.

~~(e)~~ (p) Except for tariff-regulated, customer-initiated, one-time use products, such as collect calling services, optional pay-per-use services (including automatic callback, repeat dialing, and three-way calling), no PIC or LEC or any billing agent acting for said PIC or LEC shall bill a customer for any service unless the PIC, LEC, or billing agent possesses written or electronic documentation that shows:

- (1) the name of the customer requesting the service;
- (2) a description of the service requested by the customer;
- (3) the date on which the customer requested the service;
- (4) the means by which the customer requested the service; and
- (5) the name, address, and telephone number of all sales agents involved.

~~(p)~~ (q) No PIC, LEC, or billing agent for any PIC or LEC shall be entitled to any compensation from a customer for services

rendered in violation of this rule.

(q) (r) The customer's local exchange company shall not disconnect the customer's phone service for nonpayment where the customer has properly disputed a carrier change or service billing.

(s) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than sixty (60) days of obtaining a written or electronically signed letter of agency. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

(t) (t) This rule shall apply only to the extent not preempted by federal law. *(Indiana Utility Regulatory Commission; 170 IAC 7-1.1-19; filed Jan 18, 1999, 1:18 p.m.: 22 IR 1938; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; filed Mar 4, 2002, 2:57 p.m.: 25 IR 2209)*

ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

Approval of Adoption of Final Rule

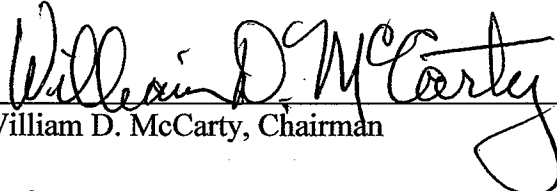
170 IAC 170 7-1.1-19

LSA 03-193

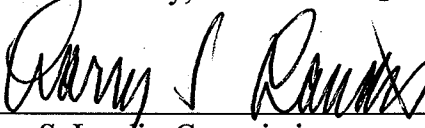
IURC RM 03-03

Upon prior publication of notice, and public hearing having been held on April 22, 2004, at 10:00 a.m. EST, as required by the provisions of I.C. 4-22-2-1, *et seq.*, the Indiana Utility Regulatory Commission met in open session on May 26, 2004, at 10:00 a.m. EST in Room E306, Indiana Government Center-South, Indianapolis, Indiana, at which time a majority of members of said Commission were present, and adopted the foregoing rule.

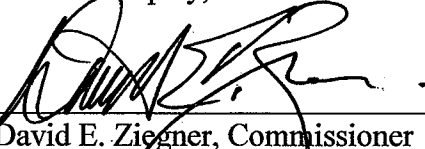
The Secretary is hereby directed to submit five (5) copies of the aforesaid rule to the Attorney General of Indiana, for his approval of same, and thereafter file one (1) duplicate approved copy with the Secretary of State.


William D. McCarty, Chairman

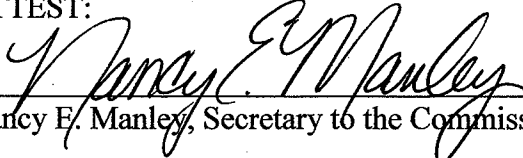

David W. Hadley, Commissioner


Larry S. Landis, Commissioner


Judith G. Ripley, Commissioner


David E. Ziegner, Commissioner

ATTEST:


Nancy E. Manley, Secretary to the Commission

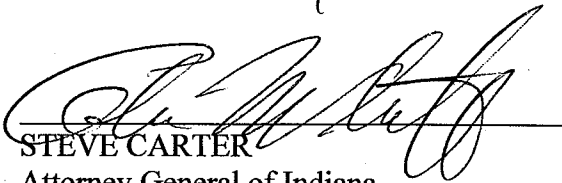
DATE: MAY 26 2004

Approval of the Adoption of Rule

170 IAC 7-1.1-19
LSA Document #03-193
IURC RM 03-03

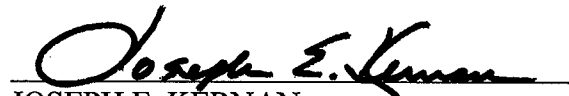
Approved as to legality,

today: 7/6/04


STEVE CARTER
Attorney General of Indiana

Approved,

today: 7/9/04


JOSEPH E. KERNAN
Governor of Indiana

Filed, today: 7/14/04 9:45am TMD


TODD ROKITA
Secretary of State